

Remarks

This paper is NOT intended as a full, complete and bonafide response to the outstanding Final Office Action dated February 13, 2004. Such a response is considered impossible because the outstanding Office Action does not establish a *prima facie* rejection of obviousness (35 U.S.C. § 103(a)) and fails to comply with Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

In the last Amendment, Currently Amended Claim 1 recited in the last limitation:

the data communication between the user interface
and the ECB means is effected through the internal
browser.

The letter dated November 19, 2003 attached to the latter-noted Amendment, as well as arguments presented by the undersigned beginning at the bottom of page 4 of the last Amendment, emphasized "that the main characteristic of the invention resides in the fact that the 'User interface of the ECB is in close connection with the internal web browser, which yields the information from the internal web server about the therapy'." In accordance with Graham, supra, the undersigned has clearly defined by the last limitation of claim 1 the subject matter of the invention which, in the opinion of the undersigned, the inventors and all concerned, is directed to unobvious subject matter of the invention *as a whole*.

In the rejection set forth by the Examiner at page 2, beginning at paragraph 3, the Examiner described the prior art including the statement that using the Internet as a communication tool is an obvious solution to communication problems. The latter point is conceded because the Internet

does provide "a common language that various machines on a network can use to communicate with one another, as taught by Fletcher-Hayes see paragraphs 0204-0206."

The undersigned also appreciates the Examiner stating that the Fletcher-Hayes communication system can be used in an extracorporeal blood treatment system because the latter "specifically discloses a web interface that allows communication between a computer/database system and various other computer systems." Comparing the latter-quoted language with the last limitation of claim 1, where indeed does the Examiner find a basis for the obviousness rejection? There is neither a teaching nor a suggestion nor a motivation in the Fletcher-Hayes et al. disclosure which renders obvious the last clause of claim 1 in the totality of the combination recited in the claims.

Once the Examiner has combined the prior art, as suggested, the obvious combination thereof is that of providing "the extracorporeal treatment device and computerized data management system disclosed by Davis with the internal [sic] communications software disclosed by Fletcher-Hayes in order to provide a means of communication that can be decoded by various machines on the network." The latter does not render obvious the **specific** last limitation of claim 1!

Interestingly enough, nowhere in the Final Office Action does the Examiner even mention the words "internal browser" appearing in claim 1 and certainly does not suggest that the prior art renders obvious "the data communication between the user interface and the ECB means is effected through the internal browser."

Applicants have not been provide a bonafide *prima facie* case of obviousness by the Examiner, and the undersigned finds it impossible to provide guidance to Applicants and Applicants' foreign counsel with respect to the future prosecution of the application. Quite obviously an appeal is in order but absent a *prima facie* case of obviousness, the only arguments that could be presented before the Board are those earlier presented and presented herein to the Examiner. Having been essentially ignored thus far by the Examiner, they most certainly will either be ignored in the future or further explanation/prior art might be provided. Having repeated the rejection and made the same FINAL, the Examiner undoubtedly considers her position to be correct, but since the undersigned cannot understand her position, obviously, Applicants are placed at a disadvantage.

Accordingly, since the record clearly fails to establish a *prima facie* case of obviousness, expedited clarification of the rejection (or the allowance of claim 1) is respectfully requested in order that the undersigned might proceed forward in an informative fashion with the future prosecution of this application.

Very respectfully,

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